

D-9

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 8, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 03MD-034
MAUI

Grant of Perpetual, Non-Exclusive Easement to Misha Bowman
for Access and Utility Purposes, Makawao, Maui, Tax Map Key:
(2) 2-9-3:portion 50.

APPLICANT:

Misha Bowman, Tenant in Severalty, whose mailing address is Box
791129, Paia, Hawaii 96779.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Honopou-Hoolawa situated at
Makawao, Maui, identified by Tax Map Key: (2) 2-9-3:portion 50,
as shown on the attached map labeled Exhibit A.

AREA:

201 square feet, more or less.

ZONING:

State Land Use District: Agriculture
County of Maui CZO: Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES ____ NO ____x

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and

repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis. State abstractor has determined Parcel 26 is an award of kuleana status. (Exhibit B)

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item No. 8 that states "maintenance of state-owned right-of-way other than public rights-of-way."

DCCA VERIFICATION:

Not applicable. The Applicant as a landowner is not required to register with DCCA.

APPLICANT REQUIREMENTS:

None

REMARKS:

By memo dated December 20, 2002, Mr. Joel Richman on behalf of Ms. Misha Bowman requested the Land Board's granting of an easement for access and utility purposes over State lands.

Our Maui office was notified by the County of Maui, Department of Planning that a SMA was required from Ms. Bowman. The Historic Preservation office recommended we take no action until a qualified archaeologist conducted an archaeological assessment to determine if historic sites were present on the State property and Ms. Bowman private property. Ms. Bowman was informed and has been working with both agencies. Copies of approval letters are attached and labeled Exhibit C.

Comments were solicited and their statements are listed below:

DHHL	No comments
Historic Preservation	No objections
County of Maui, Planning	Exempt from permit procedures of SMA
County of Maui, Public Works	No comments

OHA	No response
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The granting of this easement is for personal use through the State property. Specifically the easement is for access to and from the Applicants personal residence (Parcel 26). This easement should not to be used in conjunction with a commercial operation located on Parcel 26. The easement currently under consideration did not require the property owner of Parcel 26 to do an environmental assessment or environmental impact statement. Many agricultural property owners are transforming farmlands into 'ecotourism' or 'agro-tourism' or business for weddings, birthday luaus, classes, tours, etc. Such activities could or may not impact the easement area (more buses and cars), the surrounding State property (Parcel 50), and adjacent private properties (traffic congestion, noise, sanitation). Therefore, if the property owner or its successor owners desires to use the easement area in conjunction with any proposed commercial activity, then the property owner and its successors and assigns shall first: (1) comply with Chapter 343, Hawaii Revised Statutes by performing an environmental assessment or if required, an environmental impact statement; and (2) obtain Land Board approval and, among other conditions, the Land Board may adjust the amount of the easement consideration to be paid to the State. The Land Board will review a formally accepted environmental assessment or environmental impact statement and will consider the commercial use of Parcel 26 and the easement, its impact to the environment and the community before rendering a decision on whether to approve or disapprove the request to use the easement area in conjunction with commercial activity on Parcel 26.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Ms. Bowman currently holds Revocable Permit No. S-6602 with Sam Butterfly and Charley Butterfly since May 1, 1988. Permit conditions are in full compliance.

Staff is requesting the consideration for the easement be at gratis. Our Abstract Section determined Parcel 26 is an award of kuleana status.

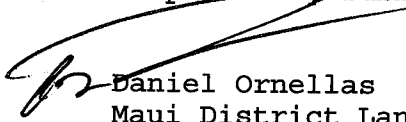
RECOMMENDATION: Subject to the conditions and requirements stated above, staff is recommending that the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel .

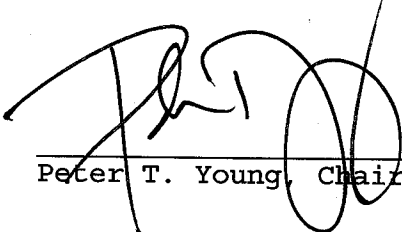
described as Tax Map Key: (2) 2-9-1:26, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Misha Bowman covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 2-9-1:26, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Daniel Ornellas
Maui District Land Agent

APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson

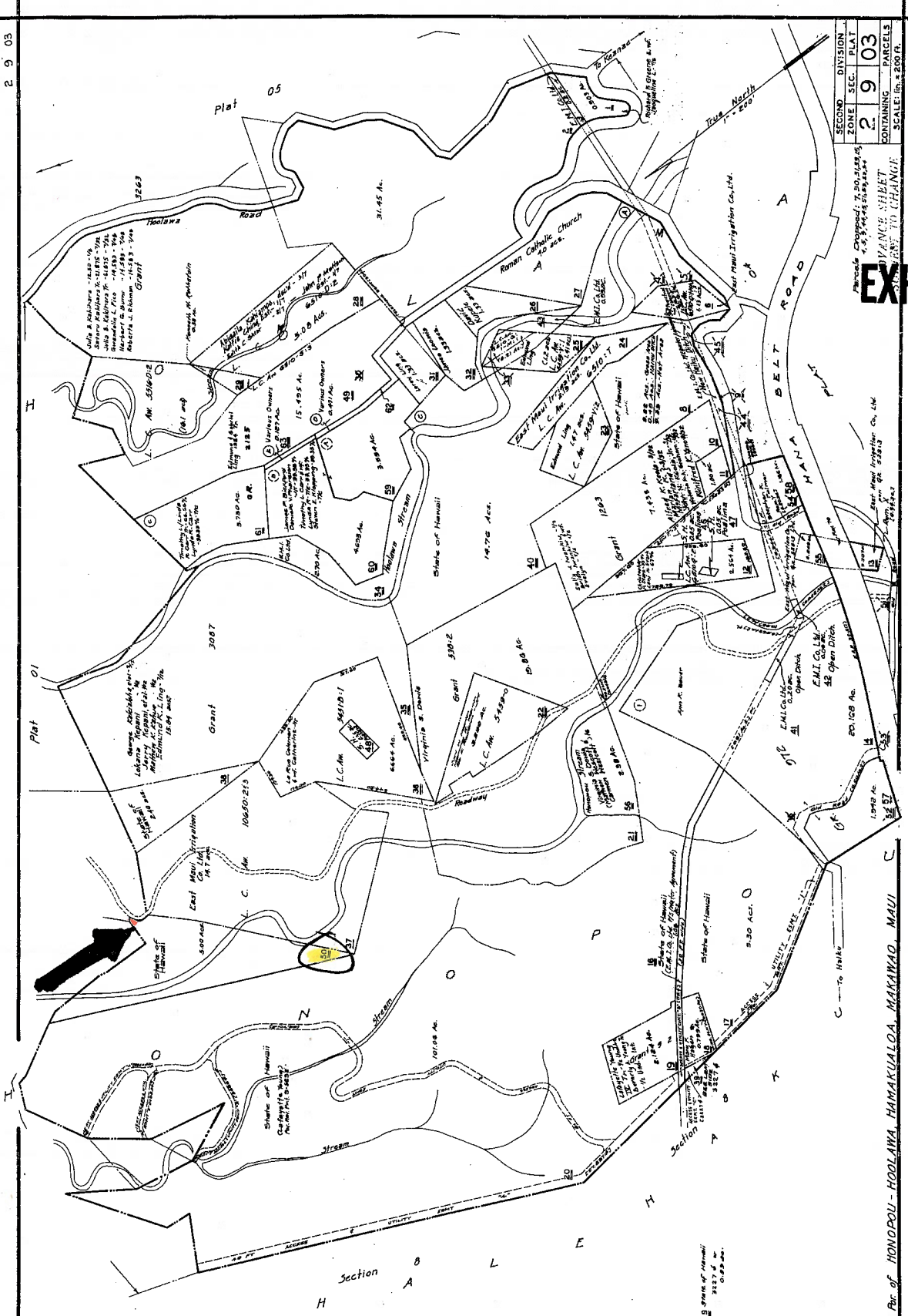
Plat 01

Plat 05

SECOND	DIVISION
2	9
03	03
CONTAINING PARCELS	
SCALE: 1 in. = 200 ft.	

EXHIBIT "A"

Per. of HONOLULU - HOOLAHA, HAMAKUALOA, MAIKAAO, MAUI



By: H. N. O. 1932
Source: for Maps Bureau
Original: 1927
Revised: 1932
Scale: 1 in. = 200 ft.

PRINTED

Misha Bowman

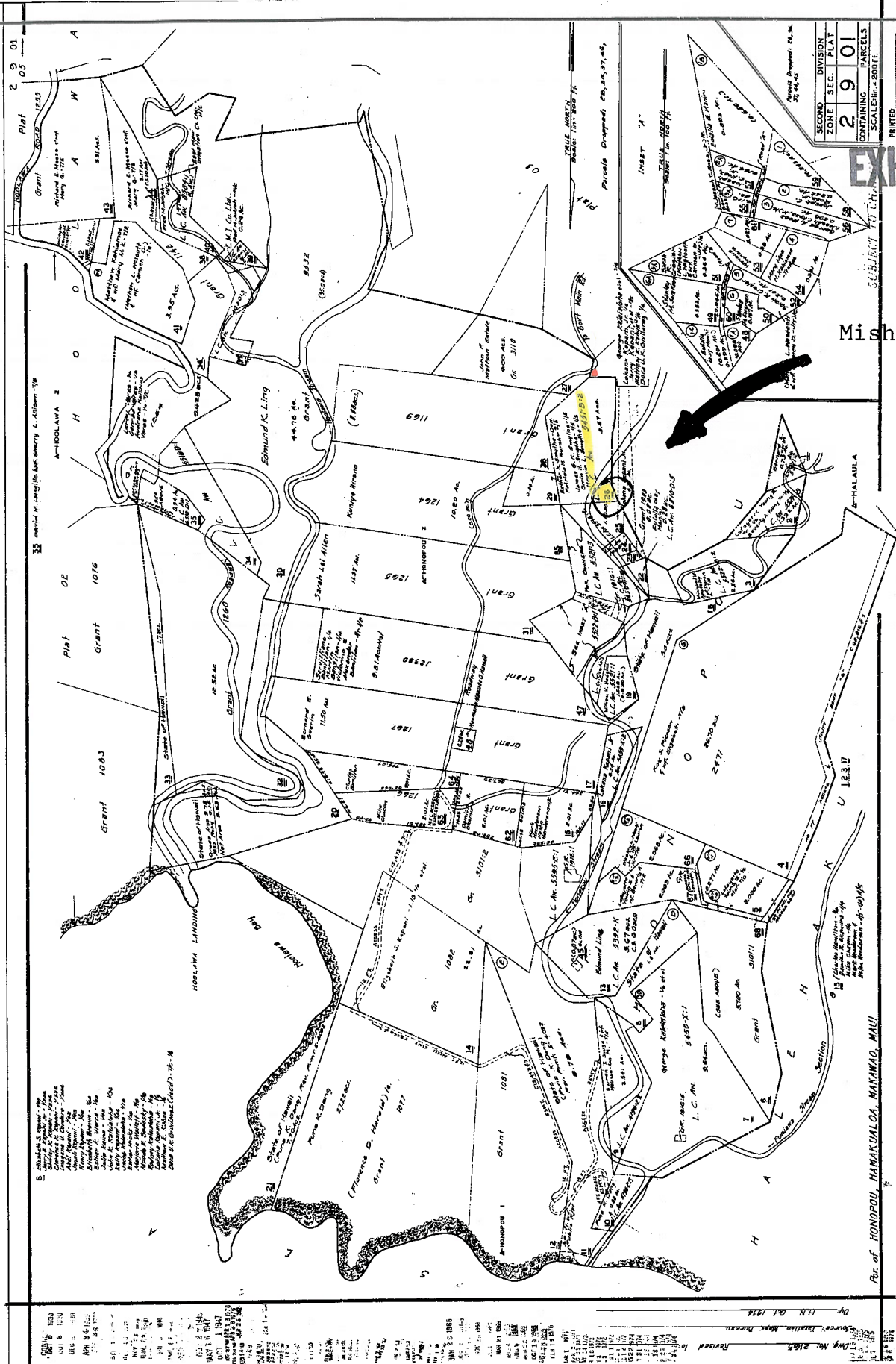


EXHIBIT "A"

L.C. Aw. 5316:2

R.P. 3233,
L.C. Aw. 5521:3

Grant 1264
to Kahalelaau

0.860 Acres

Grant 1169
to Kaawa

R.P. 5290,
L.C. Aw. 5451-B:2
to Paiea

R.P. 3236,
L.C. Aw. 10650:2
to Kaawa

tmk: 2-9-1:26

R.P. 5290,
L.C. Aw. 5451-B:2
to Paiea
3.591 Acres

R.P. 3233,
L.C. Aw. 5521:2 to Nakakuana (Government Land)

1/2" POL
(Set)

3/4" Pipe
(Fnd)

Grant 3110
to Pia

Prepared For:

Joel Richman
P.O. Box 791539
Paia, Maui HI 96779
FAX: 572-4580

NOTES:

1. This map is based on an actual field survey performed on June 12, 2002.

This map was prepared by me or under my direct supervision.

Randall Sherman
Randall Sherman
Registered Professional Land Surveyor
State of Hawaii Certificate Number LS4187

Land Surveyors, Inc.

Kihei Gateway Plaza
362 Huku Li'i Place, Suite 202 TEL: (808) 874-8848
Kihei, Maui, HI 96753 FAX: (808) 874-1136

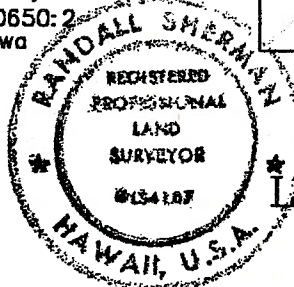


Exhibit Showing
R.P. 5290,
L.C. Aw. 5451-B:2
to Paiea
and a portion of
Grant 1264
to Kahalelaau
Situated at

Honopou, Hamakualoa, Makawao, Maui, Hawaii

125 0 125 250 375 Feet

Job: J2114

Date: 12 JUN 02

Name: RICHMAN-Par 26

TMK:2-9-01:026

EASEMENT DESCRIPTION

Being an easement for driveway and utility purposes affecting Royal Patent 3233, Land Commission Award 5521, Apana 2 to Nakakuaana in favor of Royal Patent 5290, Land Commission Award 5451-B, Apana 2 to Palea.

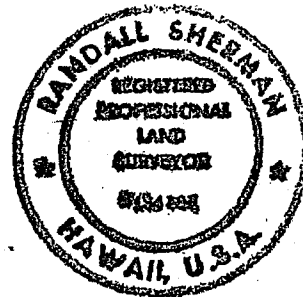
Situated on the northerly side of Government Road approximately 1,800 feet northerly of its junction with the Hana Highway.

At Honopou, Hamakualoa, Makawao, Maui, Hawaii
TMK: 2-9-03:050 por

Beginning at a 3/4 inch pipe (found) at the easterly corner of this parcel, the southeasterly corner of Royal Patent 5290, Land Commission Award 5451-B, Apana 2 to Palea, a westerly corner of Grant 3110 to Pia and also being on the northerly side of Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kapuai" being 7,655.74 feet north and 11,065.64 feet east and running by azimuths measured clockwise from true south; thence,

1. 63° 01' 30" 31.81 feet along Government Road; thence,
2. 194° 03' 15.80 feet under, over, and across Royal Patent 3233, Land Commission Award 5521, Apana 2 to Nakakuaana; thence,
3. 269° 58' 24.74 feet along Royal Patent 5290, Land Commission Award 5451-B, Apana 2 to Palea to the point of beginning and containing an area of 201 Sq. Ft.

This description is based on an actual field survey and was prepared by me or under my direct supervision.



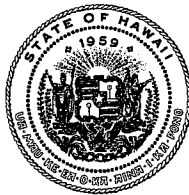
Randall Sherman *Exp May 1, 2004*

Randall Sherman
Registered Professional Land Surveyor
State of Hawaii Certificate Number LS4187

Nov 4, 2002
Date

LINDA LINGLE
GOVERNOR

EXHIBIT "B"



RECEIVED
DIVISION OF
LAND MANAGEMENT

2003 FEB 14 PM 1:25

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

ERNEST LAU
DEPUTY DIRECTOR

DEAN A. NAKANO
ACTING DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE
COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. Box 621
HONOLULU, HAWAII 96809

February 12, 2003

9997(M)

MEMORANDUM

TO: Jason Koga, Maui Land Agent

THROUGH: Dierdre S. Mamiya, Administrator

FROM: E. Mahoe Collins, Abstractor

**Subject: Kuleana Status of designated tax map key parcel (2) 2-9-01: 26
situate at Honopou, Hamakualoa, Maui.**

We have been asked to confirm the kuleana status of the original source of title to tax key parcel (2) 2-9-01: 26, identified as Land Commission Award No. 5451 B, Apana 2 to Palea.

Records in our office reveal that the name of the awardee, Palea, does not appear in the Mahele Book of 1848 indicating that, said Palea did not participate in the 1848 Land Division with the king.

As recorded by the Commissioners in Volume 8 of the Foreign Testimonies at page 105, the said Palea received the subject premises "from his parents and they had it from the days of Kamehameha I."

We find that the subject land claim of Palea, adjudicated by the Land Commissioners under Land Commission Award 5451 B, Apana 2, dated December 30, 1853, is an award of kuleana status.

If you have any further questions please call me at 587-0458.

ALAN M. ARAKAWA
Mayor

MICHAEL W. FOLEY
Director

WAYNE A. BOTEILHO
Deputy Director



RECEIVED
MAUI DISTRICT
LAND DIVISION

2005 DEC -6 PM 2:14

COUNTY OF MAUI
DEPARTMENT OF PLANNING

May 25, 2004

Ms. Misha Bowman
P.O. Box 791129
Paia, Hawaii 96799

Dear Ms. Bowman:

RE: Special Management Area (SMA) Assessment for Access Easement
Over State of Hawaii Road Located at TMK: 2-2-3: 050, Honopu
Road, Makawao, (SMX2004/0331) (SM52004/0215)

The Maui Planning Department (Department) has reviewed the above-referenced assessment application and finds that the request consists of a "Creation or termination of an easement . . ." The potential environmental and ecological effects of the above-referenced project have been reviewed in accordance with the significance criteria set forth in Section 12-202-12(e) of the Special Management Area Rules for the Maui Planning Commission.

Based upon the foregoing, the Department finds that the request will not have a cumulative impact, or a significant environmental or ecological effect on the Special Management Area within which the project site is located. As such, the request is not a "development" and is, therefore, exempt from the permit procedures of the Special Management Area Rules for the Maui Planning Commission.

Thank you for your cooperation. If additional clarification is required, please contact Mr. Paul Fasi, Staff Planner, of this office at 270-7735.

Sincerely,

Michael W. Foley
Planning Director

Post-it® Fax Note	7671	Date	# of pages
To	Jason Koga	From	Hist Stg
Co./Dept.	Land Div.	Co.	
Phone #		Phone #	
Fax #	984-8111	Fax #	

EXHIBIT "C"
 LAND MANAGEMENT
 2003 SEP 19 AM 9:50

PETER T. YOUNG
 CHAIRPERSON
 BOARD OF LAND AND NATURAL RESOURCES
 COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
 DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
 DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
 BOATING AND OCEAN RECREATION
 BUREAU OF CONVEYANCES
 COMMISSION ON WATER RESOURCE MANAGEMENT
 CONSERVATION AND COASTAL LANDS
 CONSERVATION AND RESOURCE ENFORCEMENT
 ENGINEERING
 FORESTRY AND WILDLIFE
 HISTORIC PRESERVATION
 KAHOLAWE ISLAND RESERVE COMMISSION
 LAND
 STATE PARKS



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

HISTORIC PRESERVATION DIVISION
 KAKUHIHEWA BUILDING, ROOM 555
 601 KAMOKILA BOULEVARD
 KAPOLEI, HAWAII 96707

September 17, 2003

Patti Conte, M.A.
 CRM Solutions Hawai'i, Inc.
 P.O. Box 1866
 Makawao, Hawai'i 96768

LOG NO: 2003.1788
 DOC NO: 0309MK09

Dear Conte,

SUBJECT: Historic Preservation Review - 6E-42 - Archaeological Assessment Access and Utility Easement over adjoining state property Honopou Ahupua'a, Makawao District, Island of Maui
TMK: (2) 2-9-003:050 and 2-9-01:026

Thank you for the opportunity to comment on this field inspection which our staff received on August 10, 2003 (Conte 2003 ms). We previously commented on the parcel requesting an archaeological assessment of the two parcels (Log 31808/Doc 0303CD06). This field inspection is an effort to satisfy this recommendation.

In your field inspection/assessment, you indicate that no impact to historic properties has resulted from the construction of a portion of the driveway over the state parcel (2-9-03:050). However, historic properties were identified on parcel owned by Ms. Bowman (2-9-01:26). Your assessment recommends that an archaeological monitor be present during ground altering activities.

Given the known presence of historic properties on the parcel, we recommend that no future activity be conducted on the parcel until an archaeological inventory survey has documented the known historic properties. Subsequent to documentation of the historic properties, we will reevaluate the necessity for archaeological monitoring.

We find this field/inspection assessment to be acceptable. The proposed road easement is pre-existing, and in use. As always, if you disagree with our comments or have questions, please contact Dr. Melissa Kirkendall (Maui/Lana'i SHPD 243-5169) as soon as possible to resolve these concerns.

Aloha,

P. Holly McEldowney

P. Holly McEldowney, Acting Administrator
 State Historic Preservation Division

MK:jen

c: Michael Foley, Director, Department of Planning, County of Maui, FAX 270-7634
 Bert Ratte, County of Maui, Land Use and Codes, FAX 270-7972
 Glen Ueno, County of Maui, Land Use and Codes, FAX 270-7972
 Jason Koga, Land Management, FAX 984-8111

Pending: Bowman